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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 United States of America,  
10 Plaintiff,  
11 v.  
12 Eli Sloan,  
13 Defendant.  
14

No. CR-15-08232-001-PCT-DLR  
**ORDER**

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16 Before the Court is Defendant's Motion to Appoint Counsel. (Doc. 219.) For the  
17 following reasons, Defendant's motion is denied.

18 On September 15, 2016, Defendant was convicted by a jury of kidnapping, assault  
19 with intent to commit aggravated sexual abuse, aggravated sexual abuse, assault resulting  
20 in substantial bodily injury, and assault by strangling. (Doc. 105.) The victim was  
21 Defendant's estranged wife. Defendant was sentenced to the Bureau of Prisons for a term  
22 of 330 months. (Doc. 168.) Defendant appealed the jury's convictions alleging errors  
23 committed by the prosecutor during closing arguments and the Court's abuse of discretion  
24 in admitting evidence of prior acts under Rule 404(b) of the Federal Rules of Evidence. On  
25 March 8, 2019, the Ninth Circuit Court of Appeals affirmed Defendant's convictions.  
26 *United States v. Sloan*, 756 Fed.Appx. 739 (9th Cir. 2019). Defendant now moves to  
27 appoint counsel in order to file a "motion for application of new standard in the direct  
28 appeal course[.]" in light of the recent Supreme Court decision *Flowers v. Mississippi*.

1 (Doc. 219) (internal quotation marks omitted). “Or possibly in the Federal Habeas Corpus  
2 course.” *Id.*

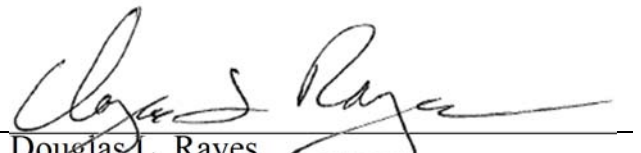
3 “[T]he right to appointed counsel extends to the first appeal of right, and no further.”  
4 *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). Therefore, a prisoner has no  
5 constitutional right to appointed counsel for a collateral attack on a conviction. *Id.*  
6 Defendant’s motion to appoint counsel, whether to appeal based on new standards or  
7 petition for writ of habeas corpus, is a collateral attack on convictions already affirmed by  
8 the Ninth Circuit Court of Appeals.

9 The Court, however, has discretion to appoint counsel in “exceptional  
10 circumstances.” *See* 28 U.S.C. § 1915(e)(1); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331  
11 (9th Cir. 1986). “A finding of exceptional circumstances requires an evaluation of both ‘the  
12 likelihood of success on the merits and the ability of the petitioner to articulate his claims  
13 *pro se* in light of the complexity of the legal issues involved.’” *Wilborn*, 789 F.2d at 1331.  
14 “Neither of these factors is dispositive and both must be viewed together before reaching  
15 a decision on request of counsel[.]” *Id.* Here, Defendant has not made a sufficient showing  
16 that appointment of counsel is necessary at this time. Defendant is in a position similar to  
17 many other *pro se* prisoner litigants. For these reasons, Defendant’s motion is denied.

18 **IT IS ORDERED** that Defendant’s Motion to Appoint Counsel (Doc. 219) is  
19 **denied.**

20 Dated this 10th day of July, 2019.

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Douglas L. Rayes  
United States District Judge